

SUBCOMMITTEE: CRIMINAL

HOUSE BILL NO. 477

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patrons Prior to Substitute--Delegates Guzman and Jones [HB 1440])

A BILL to amend and reenact §§ 16.1-228, 16.1-241, 16.1-269.1, 16.1-269.2, and 16.1-277.1 of the Code of Virginia, relating to juveniles; trial as an adult.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-228, 16.1-241, 16.1-269.1, 16.1-269.2, and 16.1-277.1 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-228. Definitions.

When used in this chapter, unless the context otherwise requires:

"Abused or neglected child" means any child:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child;

3. Whose parents or other person responsible for his care abandons such child;

27 4. Whose parents or other person responsible for his care commits or allows to be committed any
28 sexual act upon a child in violation of the law;

29 5. Who is without parental care or guardianship caused by the unreasonable absence or the mental
30 or physical incapacity of the child's parent, guardian, legal custodian, or other person standing in loco
31 parentis;

32 6. Whose parents or other person responsible for his care creates a substantial risk of physical or
33 mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as
34 defined in § 55.1-2000, with a person to whom the child is not related by blood or marriage and who the
35 parent or other person responsible for his care knows has been convicted of an offense against a minor for
36 which registration is required as a violent sexual offender pursuant to § 9.1-902; or

37 7. Who has been identified as a victim of sex trafficking or severe forms of trafficking as defined
38 in the Trafficking Victims Protection Act of 2000, 22 U.S.C § 7102 et seq., and in the Justice for Victims
39 of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq.

40 If a civil proceeding under this chapter is based solely on the parent having left the child at a
41 hospital or emergency medical services agency, it shall be an affirmative defense that such parent safely
42 delivered the child to a hospital that provides 24-hour emergency services or to an attended emergency
43 medical services agency that employs emergency medical services personnel, within 14 days of the child's
44 birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the
45 court may find such a child is a neglected child upon the ground of abandonment.

46 "Adoptive home" means the place of residence of any natural person in which a child resides as a
47 member of the household and in which he has been placed for the purposes of adoption or in which he has
48 been legally adopted by another member of the household.

49 "Adult" means a person 18 years of age or older.

50 "Ancillary crime" or "ancillary charge" means any delinquent act committed by a juvenile as a part
51 of the same act or transaction as, or which constitutes a part of a common scheme or plan with, a delinquent
52 act which would be a felony if committed by an adult.

"Boot camp" means a short term secure or nonsecure juvenile residential facility with highly structured components including, but not limited to, military style drill and ceremony, physical labor, education and rigid discipline, and no less than six months of intensive aftercare.

"Child," "juvenile," or "minor" means a person less than 18 years of age.

"Child in need of services" means (i) a child whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of the child or (ii) a child under the age of 14 whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of another person; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be a child in need of services, nor shall any child who habitually remains away from or habitually deserts or abandons his family as a result of what the court or the local child protective services unit determines to be incidents of physical, emotional or sexual abuse in the home be considered a child in need of services for that reason alone.

However, to find that a child falls within these provisions, ~~(i)~~ (a) the conduct complained of must present a clear and substantial danger to the child's life or health or to the life or health of another person, ~~(ii)~~ (b) the child or his family is in need of treatment, rehabilitation or services not presently being received, and ~~(iii)~~ (c) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

"Child in need of supervision" means:

1. A child who, while subject to compulsory school attendance, is habitually and without justification absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of any and all educational services and programs that are required to be provided by law and which meet the child's particular educational needs, (ii) the school system from which the child is absent or other appropriate agency has made a reasonable effort to effect the child's regular attendance without success, and (iii) the school system has provided documentation that it has complied with the provisions of § 22.1-258; or

2. A child who, without reasonable cause and without the consent of his parent, lawful custodian or placement authority, remains away from or deserts or abandons his family or lawful custodian on more than one occasion or escapes or remains away without proper authority from a residential care facility in which he has been placed by the court, and (i) such conduct presents a clear and substantial danger to the child's life or health, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

"Child welfare agency" means a child-placing agency, child-caring institution or independent foster home as defined in § 63.2-100.

"The court" or the "juvenile court" or the "juvenile and domestic relations court" means the juvenile and domestic relations district court of each county or city.

"Delinquent act" means (i) an act designated a crime under the law of the Commonwealth, or an ordinance of any city, county, town, or service district, or under federal law, (ii) a violation of § 18.2-308.7, or (iii) a violation of a court order as provided for in § 16.1-292, but shall not include an act other than a violation of § 18.2-308.7, which is otherwise lawful, but is designated a crime only if committed by a child. For purposes of §§ 16.1-241 and 16.1-278.9, the term shall include a refusal to take a breath test in violation of § 18.2-268.2 or a similar ordinance of any county, city, or town.

"Delinquent child" means a child who has committed a delinquent act or an adult who has committed a delinquent act prior to his 18th birthday, except where the jurisdiction of the juvenile court has been terminated under the provisions of § 16.1-269.6.

"Department" means the Department of Juvenile Justice and "Director" means the administrative head in charge thereof or such of his assistants and subordinates as are designated by him to discharge the duties imposed upon him under this law.

"Family abuse" means any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by a person against such person's family or household member. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of Article 7 (§ 18.2-61 et seq.) of Chapter

4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.

"Family or household member" means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time, or (vi) any individual who cohabits or who, within the previous 12 months, cohabited with the person, and any children of either of them then residing in the same home with the person.

"Fictive kin" means persons who are not related to a child by blood or adoption but have an established relationship with the child or his family.

"Foster care services" means the provision of a full range of casework, treatment and community services for a planned period of time to a child who is abused or neglected as defined in § 63.2-100 or in need of services as defined in this section and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board of social services or a public agency designated by the community policy and management team and the parents or guardians where legal custody remains with the parents or guardians, (iii) has been committed or entrusted to a local board of social services or child welfare agency, or (iv) has been placed under the supervisory responsibility of the local board pursuant to § 16.1-293.

"Independent living arrangement" means placement of (i) a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency by the local board or licensed child-placing agency or (ii) a child at least 16 years of age or a person between the ages of 18 and 21 who was committed to the Department of Juvenile Justice immediately prior to placement by the Department of Juvenile

Justice, in a living arrangement in which such child or person does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older and who has been committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. "Independent living services" may also mean services and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the age of 21 years; (ii) is between the ages of 18 and 21 and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local board of social services; or (iii) is a child at least 16 years of age or a person between the ages of 18 and 21 who was committed to the Department of Juvenile Justice immediately prior to placement in an independent living arrangement. Such services shall include counseling, education, housing, employment, and money management skills development and access to essential documents and other appropriate services to help children or persons prepare for self-sufficiency.

"Intake officer" means a juvenile probation officer appointed as such pursuant to the authority of this chapter.

"Jail" or "other facility designed for the detention of adults" means a local or regional correctional facility as defined in § 53.1-1, except those facilities utilized on a temporary basis as a court holding cell for a child incident to a court hearing or as a temporary lock-up room or ward incident to the transfer of a child to a juvenile facility.

"The judge" means the judge or the substitute judge of the juvenile and domestic relations district court of each county or city.

"This law" or "the law" means the Juvenile and Domestic Relations District Court Law embraced in this chapter.

"Legal custody" means (i) a legal status created by court order which vests in a custodian the right to have physical custody of the child, to determine and redetermine where and with whom he shall live, the right and duty to protect, train and discipline him and to provide him with food, shelter, education and

ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal status created by court order of joint custody as defined in § 20-107.2.

"Permanent foster care placement" means the place of residence in which a child resides and in which he has been placed pursuant to the provisions of §§ 63.2-900 and 63.2-908 with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or 63.2-1517. A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

"Qualified individual" means a trained professional or licensed clinician who is not an employee of the local board of social services or licensed child-placing agency that placed the child in a qualified residential treatment program and is not affiliated with any placement setting in which children are placed by such local board of social services or licensed child-placing agency.

"Qualified residential treatment program" means a program that (i) provides 24-hour residential placement services for children in foster care; (ii) has adopted a trauma-informed treatment model that meets the clinical and other needs of children with serious emotional or behavioral disorders, including any clinical or other needs identified through assessments conducted pursuant to clause (viii) of this definition; (iii) employs registered or licensed nursing and other clinical staff who provide care, on site and within the scope of their practice, and are available 24 hours a day, 7 days a week; (iv) conducts outreach with the child's family members, including efforts to maintain connections between the child and his siblings and other family; documents and maintains records of such outreach efforts; and maintains contact information for any known biological family and fictive kin of the child; (v) whenever appropriate and in the best interest of the child, facilitates participation by family members in the child's treatment program before and after discharge and documents the manner in which such participation is facilitated; (vi) provides discharge planning and family-based aftercare support for at least six months after discharge; (vii) is licensed in accordance with 42 U.S.C. § 671(a)(10) and accredited by an organization approved by the federal Secretary of Health and Human Services; and (viii) requires that any child placed in the program receive an assessment within 30 days of such placement by a qualified individual that (a) assesses

the strengths and needs of the child using an age-appropriate, evidence-based, validated, and functional assessment tool approved by the Commissioner of Social Services; (b) identifies whether the needs of the child can be met through placement with a family member or in a foster home or, if not, in a placement setting authorized by 42 U.S.C. § 672(k)(2), including a qualified residential treatment program, that would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short-term and long-term goals established for the child in his foster care or permanency plan; (c) establishes a list of short-term and long-term mental and behavioral health goals for the child; and (d) is documented in a written report to be filed with the court prior to any hearing on the child's placement pursuant to § 16.1-281, 16.1-282, 16.1-282.1, or 16.1-282.2.

"Residual parental rights and responsibilities" means all rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including but not limited to the right of visitation, consent to adoption, the right to determine religious affiliation and the responsibility for support.

"Secure facility" or "detention home" means a local, regional or state public or private locked residential facility that has construction fixtures designed to prevent escape and to restrict the movement and activities of children held in lawful custody.

"Shelter care" means the temporary care of children in physically unrestricting facilities.

"State Board" means the State Board of Juvenile Justice.

"Status offender" means a child who commits an act prohibited by law which would not be criminal if committed by an adult.

"Status offense" means an act prohibited by law which would not be an offense if committed by an adult.

"Violent juvenile felony" means any of the delinquent acts enumerated in subsection B or C of § 16.1-269.1 when committed by a juvenile ~~14~~ 16 years of age or older.

§ 16.1-241. Jurisdiction; consent for abortion.

The judges of the juvenile and domestic relations district court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the

counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each juvenile and domestic relations district court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the adjoining city or county, over all cases, matters and proceedings involving:

A. The custody, visitation, support, control or disposition of a child:

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent except where the jurisdiction of the juvenile court has been terminated or divested;

2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship;

2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian;

3. Whose custody, visitation or support is a subject of controversy or requires determination. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, except as provided in § 16.1-244;

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817 or whose parent or parents for good cause desire to be relieved of his care and custody;

5. Where the termination of residual parental rights and responsibilities is sought. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided in § 16.1-244;

6. Who is charged with a traffic infraction as defined in § 46.2-100; or

7. Who is alleged to have refused to take a blood test in violation of § 18.2-268.2.

In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was ~~14~~ 16 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. In any case in which the juvenile

is alleged to have committed a violent juvenile felony enumerated in subsection C of § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was ~~14~~ 16 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. A determination by the juvenile court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as provided in § 16.1-269.6.

In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

The authority of the juvenile court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, step-grandparents, stepparents, former stepparents, blood relatives and family members. A party with a legitimate interest shall not include any person (i) whose parental rights have been terminated by court order, either voluntarily or involuntarily, (ii) whose interest in the child derives from or through a person whose parental rights have been terminated by court order, either voluntarily or involuntarily, including, but not limited to, grandparents, stepparents, former stepparents, blood relatives and family members, if the child subsequently has been legally adopted, except where a final order of adoption is entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, when the child who is the subject of the petition was conceived as a

result of such violation. The authority of the juvenile court to consider a petition involving the custody of a child shall not be proscribed or limited where the child has previously been awarded to the custody of a local board of social services.

A1. Making specific findings of fact required by state or federal law to enable a child to apply for or receive a state or federal benefit.

B. The admission of minors for inpatient treatment in a mental health facility in accordance with the provisions of Article 16 (§ 16.1-335 et seq.) and the involuntary admission of a person with mental illness or judicial certification of eligibility for admission to a training center for persons with intellectual disability in accordance with the provisions of Chapter 8 (§ 37.2-800 et seq.) of Title 37.2. Jurisdiction of the involuntary admission and certification of adults shall be concurrent with the general district court.

C. Except as provided in subsections D and H, judicial consent to such activities as may require parental consent may be given for a child who has been separated from his parents, guardian, legal custodian or other person standing in loco parentis and is in the custody of the court when such consent is required by law.

D. Judicial consent for emergency surgical or medical treatment for a child who is neither married nor has ever been married, when the consent of his parent, guardian, legal custodian or other person standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person standing in loco parentis (i) is not a resident of the Commonwealth, (ii) has his whereabouts unknown, (iii) cannot be consulted with promptness, reasonable under the circumstances, or (iv) fails to give such consent or provide such treatment when requested by the judge to do so.

E. Any person charged with deserting, abandoning or failing to provide support for any person in violation of law.

F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

1. Who has been abused or neglected;

2. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817 or is otherwise before the court pursuant to subdivision A 4; or

293 3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court
294 finds that such person has by overt act or omission induced, caused, encouraged or contributed to the
295 conduct of the child complained of in the petition.

296 G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or
297 other person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other
298 services that are required by law to be provided for that child or such child's parent, guardian, legal
299 custodian or other person standing in loco parentis. Jurisdiction in such cases shall be concurrent with and
300 not exclusive of that of courts having equity jurisdiction as provided in § 16.1-244.

301 H. Judicial consent to apply for a work permit for a child when such child is separated from his
302 parents, legal guardian or other person standing in loco parentis.

303 I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or
304 neglect of children or with any violation of law that causes or tends to cause a child to come within the
305 purview of this law, or with any other offense against the person of a child. In prosecution for felonies
306 over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is
307 probable cause.

308 J. All offenses in which one family or household member is charged with an offense in which
309 another family or household member is the victim and all offenses under § 18.2-49.1.

310 In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to
311 determining whether or not there is probable cause. Any objection based on jurisdiction under this
312 subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial, before
313 the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it shall be
314 conclusively waived for all purposes. Any such objection shall not affect or be grounds for challenging
315 directly or collaterally the jurisdiction of the court in which the case is tried.

316 K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily
317 relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such parental
318 rights. No such petition shall be accepted, however, after the child has been placed in the home of adoptive
319 parents.

L. Any person who seeks spousal support after having separated from his spouse. A decision under this subdivision shall not be res judicata in any subsequent action for spousal support in a circuit court. A circuit court shall have concurrent original jurisdiction in all causes of action under this subdivision.

M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1, and all petitions filed for the purpose of obtaining an order of protection pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10 if either the alleged victim or the respondent is a juvenile.

N. Any person who escapes or remains away without proper authority from a residential care facility in which he had been placed by the court or as a result of his commitment to the Virginia Department of Juvenile Justice.

O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.).

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2, or by another state in the same manner as if the orders were entered by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the juvenile and domestic relations district court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20. A circuit court shall have concurrent original jurisdiction to the extent provided for in § 20-49.2.

R. [Repealed.]

S. Petitions filed by school boards against parents pursuant to §§ 16.1-241.2 and 22.1-279.3.

T. Petitions to enforce any request for information or subpoena that is not complied with or to review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect pursuant to § 63.2-1526.

U. Petitions filed in connection with parental placement adoption consent hearings pursuant to § 63.2-1233. Such proceedings shall be advanced on the docket so as to be heard by the court within 10 days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

346 V. Petitions filed for the purpose of obtaining the court's assistance with the execution of consent
347 to an adoption when the consent to an adoption is executed pursuant to the laws of another state and the
348 laws of that state provide for the execution of consent to an adoption in the court of the Commonwealth.

349 W. Petitions filed by a juvenile seeking judicial authorization for a physician to perform an
350 abortion if a minor elects not to seek consent of an authorized person.

351 After a hearing, a judge shall issue an order authorizing a physician to perform an abortion, without
352 the consent of any authorized person, if he finds that (i) the minor is mature enough and well enough
353 informed to make her abortion decision, in consultation with her physician, independent of the wishes of
354 any authorized person, or (ii) the minor is not mature enough or well enough informed to make such
355 decision, but the desired abortion would be in her best interest.

356 If the judge authorizes an abortion based on the best interests of the minor, such order shall
357 expressly state that such authorization is subject to the physician or his agent giving notice of intent to
358 perform the abortion; however, no such notice shall be required if the judge finds that such notice would
359 not be in the best interest of the minor. In determining whether notice is in the best interest of the minor,
360 the judge shall consider the totality of the circumstances; however, he shall find that notice is not in the
361 best interest of the minor if he finds that (i) one or more authorized persons with whom the minor regularly
362 and customarily resides is abusive or neglectful, and (ii) every other authorized person, if any, is either
363 abusive or neglectful or has refused to accept responsibility as parent, legal guardian, custodian or person
364 standing in loco parentis.

365 The minor may participate in the court proceedings on her own behalf, and the court may appoint
366 a guardian ad litem for the minor. The court shall advise the minor that she has a right to counsel and shall,
367 upon her request, appoint counsel for her.

368 Notwithstanding any other provision of law, the provisions of this subsection shall govern
369 proceedings relating to consent for a minor's abortion. Court proceedings under this subsection and records
370 of such proceedings shall be confidential. Such proceedings shall be given precedence over other pending
371 matters so that the court may reach a decision promptly and without delay in order to serve the best

372 interests of the minor. Court proceedings under this subsection shall be heard and decided as soon as
373 practicable but in no event later than four days after the petition is filed.

374 An expedited confidential appeal to the circuit court shall be available to any minor for whom the
375 court denies an order authorizing an abortion without consent or without notice. Any such appeal shall be
376 heard and decided no later than five days after the appeal is filed. The time periods required by this
377 subsection shall be subject to subsection B of § 1-210. An order authorizing an abortion without consent
378 or without notice shall not be subject to appeal.

379 No filing fees shall be required of the minor at trial or upon appeal.

380 If either the original court or the circuit court fails to act within the time periods required by this
381 subsection, the court before which the proceeding is pending shall immediately authorize a physician to
382 perform the abortion without consent of or notice to an authorized person.

383 Nothing contained in this subsection shall be construed to authorize a physician to perform an
384 abortion on a minor in circumstances or in a manner that would be unlawful if performed on an adult
385 woman.

386 A physician shall not knowingly perform an abortion upon an unemancipated minor unless consent
387 has been obtained or the minor delivers to the physician a court order entered pursuant to this section and
388 the physician or his agent provides such notice as such order may require. However, neither consent nor
389 judicial authorization nor notice shall be required if the minor declares that she is abused or neglected and
390 the attending physician has reason to suspect that the minor may be an abused or neglected child as defined
391 in § 63.2-100 and reports the suspected abuse or neglect in accordance with § 63.2-1509; or if there is a
392 medical emergency, in which case the attending physician shall certify the facts justifying the exception
393 in the minor's medical record.

394 For purposes of this subsection:

395 "Authorization" means the minor has delivered to the physician a notarized, written statement
396 signed by an authorized person that the authorized person knows of the minor's intent to have an abortion
397 and consents to such abortion being performed on the minor.

398 "Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor
399 or (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling with
400 whom the minor regularly and customarily resides and who has care and control of the minor. Any person
401 who knows he is not an authorized person and who knowingly and willfully signs an authorization
402 statement consenting to an abortion for a minor is guilty of a Class 3 misdemeanor.

403 "Consent" means that (i) the physician has given notice of intent to perform the abortion and has
404 received authorization from an authorized person, or (ii) at least one authorized person is present with the
405 minor seeking the abortion and provides written authorization to the physician, which shall be witnessed
406 by the physician or an agent thereof. In either case, the written authorization shall be incorporated into the
407 minor's medical record and maintained as a part thereof.

408 "Medical emergency" means any condition which, on the basis of the physician's good faith
409 clinical judgment, so complicates the medical condition of the pregnant minor as to necessitate the
410 immediate abortion of her pregnancy to avert her death or for which a delay will create a serious risk of
411 substantial and irreversible impairment of a major bodily function.

412 "Notice of intent to perform the abortion" means that (i) the physician or his agent has given actual
413 notice of his intention to perform such abortion to an authorized person, either in person or by telephone,
414 at least 24 hours previous to the performance of the abortion; or (ii) the physician or his agent, after a
415 reasonable effort to notify an authorized person, has mailed notice to an authorized person by certified
416 mail, addressed to such person at his usual place of abode, with return receipt requested, at least 72 hours
417 prior to the performance of the abortion.

418 "Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical
419 procedure or to induce a miscarriage as provided in § 18.2-72, 18.2-73, or 18.2-74.

420 "Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid
421 marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any of
422 the Armed Forces of the United States; (iii) willingly living separate and apart from his or her parents or
423 guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an order of
424 emancipation pursuant to Article 15 (§ 16.1-331 et seq.).

425 X. Petitions filed pursuant to Article 17 (§ 16.1-349 et seq.) relating to standby guardians for minor
426 children.

427 Y. Petitions involving minors filed pursuant to § 32.1-45.1 relating to obtaining a blood specimen
428 or test results.

429 The ages specified in this law refer to the age of the child at the time of the acts complained of in
430 the petition.

431 Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service
432 of any process in a proceeding pursuant to subdivision A 3, except as provided in subdivision A 6 of §
433 17.1-272, or subsection B, D, M, or R.

434 Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation
435 of subsection W shall be guilty of a Class 3 misdemeanor.

436 **§ 16.1-269.1. Trial in circuit court; preliminary hearing; direct indictment; remand.**

437 A. Except as provided in subsections B and C, if a juvenile 14 years of age or older at the time of
438 an alleged offense is charged with an offense which would be a felony if committed by an adult, the court
439 shall, on motion of the attorney for the Commonwealth and prior to a hearing on the merits, hold a transfer
440 hearing and may retain jurisdiction or transfer such juvenile for proper criminal proceedings to the
441 appropriate circuit court having criminal jurisdiction of such offenses if committed by an adult. Any
442 transfer to the appropriate circuit court shall be subject to the following conditions:

443 1. Notice as prescribed in §§ 16.1-263 and 16.1-264 shall be given to the juvenile and his parent,
444 guardian, legal custodian or other person standing in loco parentis; or attorney;

445 2. The juvenile court finds that probable cause exists to believe that the juvenile committed the
446 delinquent act as alleged or a lesser included delinquent act which would be a felony if committed by an
447 adult;

448 3. The juvenile is competent to stand trial. The juvenile is presumed to be competent and the burden
449 is on the party alleging the juvenile is not competent to rebut the presumption by a preponderance of the
450 evidence; and

4. The court finds by a preponderance of the evidence that the juvenile is not a proper person to remain within the jurisdiction of the juvenile court. In determining whether a juvenile is a proper person to remain within the jurisdiction of the juvenile court, the court shall consider, but not be limited to, the following factors:

- a. The juvenile's age;
- b. The seriousness and number of alleged offenses, including (i) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the alleged offense was against persons or property, with greater weight being given to offenses against persons, especially if death or bodily injury resulted; (iii) whether the maximum punishment for such an offense is greater than 20 years confinement if committed by an adult; (iv) whether the alleged offense involved the use of a firearm or other dangerous weapon by brandishing, threatening, displaying or otherwise employing such weapon; and (v) the nature of the juvenile's participation in the alleged offense;
- c. Whether the juvenile can be retained in the juvenile justice system long enough for effective treatment and rehabilitation;
- d. The appropriateness and availability of the services and dispositional alternatives in both the criminal justice and juvenile justice systems for dealing with the juvenile's problems;
- e. The record and previous history of the juvenile in this or other jurisdictions, including (i) the number and nature of previous contacts with juvenile or circuit courts, (ii) the number and nature of prior periods of probation, (iii) the number and nature of prior commitments to juvenile correctional centers, (iv) the number and nature of previous residential and community-based treatments, (v) whether previous adjudications and commitments were for delinquent acts that involved the infliction of serious bodily injury, and (vi) whether the alleged offense is part of a repetitive pattern of similar adjudicated offenses;
- f. Whether the juvenile has previously absconded from the legal custody of a juvenile correctional entity in this or any other jurisdiction;
- g. The extent, if any, of the juvenile's degree of intellectual disability or mental illness;
- h. The juvenile's school record and education;
- i. The juvenile's mental and emotional maturity; and

j. The juvenile's physical condition and physical maturity.

No transfer decision shall be precluded or reversed on the grounds that the court failed to consider any of the factors specified in subdivision 4.

B. The juvenile court shall conduct a preliminary hearing whenever a juvenile ~~14~~ 16 years of age or older is charged with murder in violation of § 18.2-31, 18.2-32 or 18.2-40, or aggravated malicious wounding in violation of § 18.2-51.2. If the juvenile is 14 years of age or older, but less than 16 years of age, then the court may proceed, on motion of the attorney for the Commonwealth, as provided in subsection A.

C. The juvenile court shall conduct a preliminary hearing whenever a juvenile ~~14~~ 16 years of age or older is charged with murder in violation of § 18.2-33; felonious injury by mob in violation of § 18.2-41; abduction in violation of § 18.2-48; malicious wounding in violation of § 18.2-51; malicious wounding of a law-enforcement officer in violation of § 18.2-51.1; felonious poisoning in violation of § 18.2-54.1; adulteration of products in violation of § 18.2-54.2; robbery in violation of § 18.2-58 or carjacking in violation of § 18.2-58.1; rape in violation of § 18.2-61; forcible sodomy in violation of § 18.2-67.1; object sexual penetration in violation of § 18.2-67.2; manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance or an imitation controlled substance in violation of § 18.2-248 if the juvenile has been previously adjudicated delinquent on two or more occasions of violating § 18.2-248 provided the adjudications occurred after the juvenile was at least ~~14~~ 16 years of age; manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute methamphetamine in violation of § 18.2-248.03 if the juvenile has been previously adjudicated delinquent on two or more occasions of violating § 18.2-248.03 provided the adjudications occurred after the juvenile was at least ~~14~~ 16 years of age; or felonious manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute anabolic steroids in violation of § 18.2-248.5 if the juvenile has been previously adjudicated delinquent on two or more occasions of violating § 18.2-248.5 provided the adjudications occurred after the juvenile was at least ~~14~~ 16 years of age, provided the attorney for the Commonwealth gives written notice of his intent to proceed pursuant to this subsection. Prior to giving written notice of his intent to proceed pursuant to this subsection, the

attorney for the Commonwealth shall submit a written request to the director of the court services unit to complete a report as described in subsection B of § 16.1-269.2 unless waived by the juvenile and his attorney or other legal representative. The report shall be filed with the court and mailed or delivered to (i) the attorney for the Commonwealth and (ii) counsel for the juvenile, or, if the juvenile is not represented by counsel, to the juvenile and a parent, guardian, or other person standing in loco parentis with respect to the juvenile, within 21 days of the date of the written request. After reviewing the report, if the attorney for the Commonwealth still intends to proceed pursuant to this subsection, he shall then provide the written notice of such intent, which shall include affirmation that he reviewed the report. The notice shall be filed with the court and mailed or delivered to counsel for the juvenile or, if the juvenile is not then represented by counsel, to the juvenile and a parent, guardian or other person standing in loco parentis with respect to the juvenile at least seven days prior to the preliminary hearing. If the attorney for the Commonwealth elects not to give such notice, ~~or~~ if he elects to withdraw the notice prior to certification of the charge to the grand jury, or if the juvenile is 14 years of age or older, but less than 16 years of age, he may proceed as provided in subsection A.

D. Upon a finding of probable cause pursuant to a preliminary hearing under subsection B or C, the juvenile court shall certify the charge, and all ancillary charges, to the grand jury. Such certification shall divest the juvenile court of jurisdiction as to the charge and any ancillary charges. Nothing in this subsection shall divest the juvenile court of jurisdiction over any matters unrelated to such charge and ancillary charges which may otherwise be properly within the jurisdiction of the juvenile court.

If the court does not find probable cause to believe that the juvenile has committed the violent juvenile felony as charged in the petition or warrant or if the petition or warrant is terminated by dismissal in the juvenile court, the attorney for the Commonwealth may seek a direct indictment in the circuit court. If the petition or warrant is terminated by nolle prosequi in the juvenile court, the attorney for the Commonwealth may seek an indictment only after a preliminary hearing in juvenile court.

If the court finds that the juvenile was not (i) for the purposes of subsection A, 14 years of age or older or (ii) for purposes of subsection B or C, 16 years of age or older, at the time of the alleged

commission of the offense or that the conditions specified in subdivision A 1, 2, or 3 have not been met, the case shall proceed as otherwise provided for by law.

E. An indictment in the circuit court cures any error or defect in any proceeding held in the juvenile court except with respect to the juvenile's age. If an indictment is terminated by nolle prosequi, the Commonwealth may reinstate the proceeding by seeking a subsequent indictment.

§ 16.1-269.2. Admissibility of statement; investigation and report; bail.

A. Statements made by the juvenile at the transfer hearing provided for under § 16.1-269.1 shall not be admissible against him over objection in any criminal proceedings following the transfer, except for purposes of impeachment.

B. Prior to a transfer hearing pursuant to subsection A of § 16.1-269.1 or a preliminary hearing pursuant to subsection C of § 16.1-269.1, a study and report to the court, in writing, relevant to the factors set out in subdivision A 4 of § 16.1-269.1, as well as an assessment of any affiliation with a criminal street gang as defined in § 18.2-46.1, shall be made by the probation services or other qualified agency designated by the court. Upon motion of the attorney for the Commonwealth for a transfer hearing pursuant to subsection A of § 16.1-269.1, the attorney for the Commonwealth shall provide notice to the designated probation services or other qualified agency of the need for a transfer report. Counsel for the juvenile and the attorney for the Commonwealth shall have full access to the study and report and any other report or data concerning the juvenile which are available to the court. The court shall not consider the report until a finding has been made concerning probable cause. If the court so orders, the study and report may be expanded to include matters provided for in § 16.1-273, whereupon it may also serve as the report required by this subsection, but on the condition that it will not be submitted to the judge who will preside at any subsequent hearings except as provided for by law.

C. After the completion of the hearing, whether or not the juvenile court decides to retain jurisdiction over the juvenile or transfer such juvenile for criminal proceedings in the circuit court, the juvenile court shall set bail for the juvenile in accordance with Chapter 9 (§ 19.2-119 et seq.) of Title 19.2, if bail has not already been set.

§ 16.1-277.1. Time limitation.

A. When a child is held continuously in secure detention, he shall be released from confinement if there is no adjudicatory or transfer hearing conducted by the court for the matters upon which he was detained within twenty-one days from the date he was first detained.

B. If a child is not held in secure detention or is released from same after having been confined, an adjudicatory or transfer hearing on the matters charged in the petition or petitions issued against him shall be conducted within 120 days from the date the petition or petitions are filed.

C. When a child is held in secure detention after the completion of his adjudicatory hearing or is detained when the juvenile court has retained jurisdiction as a result of a transfer hearing, he shall be released from such detention if the disposition hearing is not completed within thirty days from the date of the adjudicatory or transfer hearing.

D. The time limitations provided for in this section shall be tolled during any period in which (i) the whereabouts of the child are unknown, (ii) the child has escaped from custody, ~~or~~ (iii) the child has failed to appear pursuant to a court order, or (iv) a report is being prepared pursuant to the written request by the attorney for the Commonwealth in accordance with subsection C of § 16.1-269.1. The limitations also may be extended by the court for a reasonable period of time based upon good cause shown, provided that the basis for such extension is recorded in writing and filed among the papers of the proceedings. For the purposes of this section, good cause includes, ~~but is not limited to,~~ extension of limitations necessary to obtain the presence of a witness to testify regarding the results of scientific analyses or examinations and good cause shown by the director of the court services unit completing a report pursuant to subsection C of § 16.1-269.1 that additional time is needed for the completion of the report.

#